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THE KERALA BUILDINGS TAX BILL, 1961

(Report of the Select Committee)

The Select Committee to which the Kerala Buildings Tax Bill, 1961 was referred, have considered the Bill clause by clause and now submit this, their report, with the Bill as reported by the Committee annexed thereto.

2. The Bill was published in the Gazette Extraordinary dated the 24th March 1961.

3. The Bill was introduced in the Assembly on the 28th March 1961 and the motion for reference of the Bill to a Select Committee was adopted on the same date.

4. The Committee met on the 24th April 1961. The changes proposed by the Committee and the reasons therefor are set out in the following paragraphs.

5. *Clause 2, sub-clause (d)*.—The Committee consider that it should be made clear that a latrine which is not attached to the main building would not come within the definition of "building". This sub-clause has been suitably modified for the purpose.

6. *Clause 3*.—The Committee are of the view that workshops should also be specifically exempted from the operation of the Act. This clause has been modified accordingly.

7. *Clause 5*.—The Committee think that in computing the floorage of a building the area covered by an open terrace without any roof should not be taken into account. Sub-clause (3) has accordingly been omitted.

8. *Clause 10*.—(1) *Sub-clause (1)*.—The Committee consider that it should be made clear that no appeal shall lie unless the tax has been paid. A specific provision for this purpose has accordingly been inserted.

(2) *Sub-clause (3)*.—The Committee think that no appeal presented after the expiration of a period of six months from the date of service of the notice of demand or the date of service of the order should be admitted. This sub-clause has been suitably modified for this purpose.

9. *New clause 11*.—The Committee feel that there should be a provision to enable the appellate authority to refer to the District Court any question of law involved in any appeal pending before the appellate authority. Where such a reference has been made the appellate authority shall pass orders on the appeal in conformity with the decision of the Court. A new clause has been inserted in the Bill for this purpose.

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10. *Clause 20 (Original clause 19)*.—The Committee are of the view that failure to produce documents in pursuance of a notice of the assessing authority under clause 8 should not be made punishable. Sub-clause (1) (b). has accordingly been omitted.

11. *Clause 21 (Original clause 20)*.—The Committee consider that the provisions of sub-clause (1) which authorises entry into buildings for purposes of inspection should be made only between sun-rise and sun-set. The Committee also feel that due notice of the entry should be given before-hand. Necessary modifications for these purposes have accordingly been made in the clause.

12. *The Schedule*.—The Committee are of the view that buildings whose total floorage exceeds 12,000 sq. ft. should be taxed at the rate of fifty naye paise per square foot. The Schedule has been modified accordingly.

R. SANKAR,
Chairman of the Select Committee.

THE KERALA BUILDINGS TAX BILL, 1961

(AS AMENDED BY THE SELECT COMMITTEE)

[Words underlined or sidelined indicate the amendments suggested by the Committee; omissions are indicated by asterisks.]

A

BILL

to provide for the levy of a tax on buildings.

Preamble.—WHEREAS it is expedient to provide for the levy of a tax on buildings;

BE it enacted in the Twelfth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Buildings Tax Act, 1961.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force with effect on and from the 2nd day of March 1961.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "appellate authority" means the appellate authority appointed by the Government;

(b) "assessee" means a person by whom buildings tax or any other sum of money is payable under this Act, and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of buildings tax payable by him;

(c) "assessing authority" means the assessing authority appointed by the Government;

(d) "building" means a house, out-house, garage, or any other structure, or part thereof, whether of masonry, bricks, wood, metal, or other material, but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main structure;

(e) "floorage" means the area included in the floor of a building, and where a building has more than one floor, the aggregate area included in all the floors together;

(f) "owner" includes a person who for the time being is receiving or is entitled to receive, the rent of any building whether on his own account or on account of himself and others or as an agent, trustee, guardian or receiver for any other person or who should so receive the rent or be entitled to receive it if the building or part thereof were let to a tenant;

(g) "prescribed" means prescribed by rules made under this Act.

3. *Exemptions.*—(1) Nothing in this Act shall apply to—

(i) buildings owned by the State Government, the Central Government or any local authority; and

(ii) buildings used principally for religious, charitable or educational purposes or as factories or workshops.

Explanation.—"Charitable purpose" includes relief of the poor * * * and medical relief.

(2) If any question arises as to whether a building falls under sub-section (1), it shall be referred to the Government and the decision of the Government thereon shall be final and shall not be called in question in any court of law.

4. *Charge of buildings tax.*—(1) Subject to the other provisions contained in this Act, there shall be charged a tax (hereinafter referred to as "buildings tax") at the rate specified in the Schedule, in respect of every building the construction of which is completed on or after the 2nd day of March, 1961 and which has a floorage of one thousand square feet or more.

(2) The buildings tax shall be payable by the owner of the building.

Explanation 1.—For the purposes of this section the construction of a building shall be deemed to have been completed when it is ready for occupation or has been actually occupied, whichever is earlier.

Explanation 2.—A building, which is not liable to be taxed under the provisions of this Act on account of its having a floorage of less than one thousand square feet, shall become liable to be so taxed if the floorage of the building is subsequently increased to one thousand square feet or more as computed in the manner specified in section 5 by new constructions or additions or combinations.

Explanation 3.—Where the floorage of a building, which has already been taxed, is subsequently increased by new extensions or additions or combinations, tax shall be computed on the total floorage of the building including that of the new extensions or additions or combinations, and credit shall be given to the tax already levied and collected in respect of the building before such extensions or additions or combinations.

5. *Computation of floorage of buildings.*—In computing the floorage of a building for purposes of assessment under this Act, the following provisions shall apply, namely:—

(1) Where a building has only one floor, the floorage shall be the total area occupied by the basement of the building.

(2) Where a building has more than one floor, the floorage shall be the aggregate of the area occupied by the basement of the building and the areas covered by each of the floors above the basement.

(3) Where there are out-houses, garages, or other structures appurtenant to the main building, the floorage of such structures shall be computed in the manner specified in clauses (1) and (2), and the floorage so obtained shall be added on to the floorage of the main building.

6. *Return of completion of new buildings.*—(1) The owner of every building having a floorage of one thousand square feet or more the construction of which has been completed on or after the 2nd day of March, 1961, shall furnish to the assessing authority a return in the prescribed form and verified in the prescribed manner and containing such particulars in respect of the building as may be prescribed.

(2) Such return shall be furnished,—

(i) in the case of buildings the construction of which has been completed before the publication of this Act, in the Gazette within three months of such publication; and

(ii) in the case of buildings, the construction of which has been completed after such publication, within two months from the date on which the construction of the building has been completed.

(3) If the assessing authority is of opinion that any person has completed the construction of a building having a floorage of one thousand square feet or more after the 2nd day of March, 1961, then, notwithstanding anything contained in sub-section (1), it may serve a notice upon the owner of such building requiring him to furnish within such period, not being less than thirty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner and containing such particulars in respect of the building as may be required in the notice.

(4) The assessing authority may, if it is satisfied that it is necessary so to do, extend the date for the furnishing of the return under this section.

7. *Return after due date and amendment of return.*—If any person has not furnished a return within the time allowed by or under section 6, or having furnished a return under that section discovers any omission or a wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

8. *Assessment.*—(1) If the assessing authority is satisfied that a return made under section 6 is correct and complete, it shall determine the floorage of the building and assess the amount payable by him as buildings tax on the basis of the return.

(2) If the assessing authority is not so satisfied, it shall serve a notice on the assessee either to attend in person at its office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the assessee may rely in support of his return.

(3) The assessing authority, after hearing such evidence as the assessee may produce and such other evidence as it may require on any specified point and after conducting such enquiries or inspection as it may consider necessary shall, by order in writing, determine the floorage of the building and assess the amount payable by him as buildings tax.

(4) For the purpose of making an assessment under this Act the assessing authority may serve, on any person who has made a return under sub-section (1) of section 6 or upon whom a notice has been served under sub-section (3) of that section, a notice requiring him to produce or cause to be produced on a date specified in the notice such records or other documents as the assessing authority may require.

(5) If any person fails to make a return in response to any notice under sub-section (3) of section 6, or fails to comply with the terms of any notice issued under sub-section (2) or sub-section (4), the assessing authority shall determine the floorage of the building to the best of its judgment and assess the amount payable by the person as buildings tax.

9. *Notice of demand.*—When any buildings tax is due in consequence of any order passed under or in pursuance of this Act, the assessing authority shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

10. *Appeals.*—(1) Any assessee objecting to the amount of the buildings tax assessed under section 8 or denying his liability to be assessed under this Act or objecting to any order of the assessing authority under this Act may appeal to the appellate authority against the assessment or against such order:

Provided that no such appeal shall lie unless the tax has been paid.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The appeal shall be presented within a period of thirty days from the date of service of the notice of demand relating to the assessment or the date of service of the order; but the appellate authority may admit an appeal presented after the

expiration of the said period, if it is satisfied that the appellant had sufficient cause for not presenting it within the said period, provided however that no such appeal shall be admitted after a perid of six months from the date of service of the notice of demand relating to the assessment or the date of service of the order, as the case may be.

(4) The appellate authority shall fix a day and place for the hearing of the appeal and may from time to time adjourn the hearing and make or cause to be made such further inquiry as it thinks fit. At the hearing of the appeal the assessing authority shall also have a right to be heard.

(5) In disposing of an appeal, the appellate authority may, subject to the provisions of section 11,—

(a) in the case of an order of assessment—

(i) confirm, reduce, enhance, or annul the assessment,

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed; or

(b) in the case of any other order, confirm, cancel or vary such order.

(6) The appellate authority shall, on the conclusion of the appeal, communicate the orders passed by it to the assessee and the assessing authority.

(7) The orders passed by the appellate authority shall, subject to the provisions of section 12, be final and shall not be liable to be questioned in a court of law.

11. *Reference to District Court.*—(1) The appellate authority may, if it is satisfied either *suo motu* or on application by any party to an appeal under section 10 that the decision on the appeal involves a question of law, draw up a statement of the case and refer it to the District Court.

(2) If the District Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the court may refer the case back to the appellate authority to make such additions thereto or alterations therein as the court may direct in that behalf.

(3) The District Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the court to the appellate authority which shall pass orders on the appeal in conformity with such judgment.

(4) For the purposes of this section, "District Court" means the District Court having jurisdiction over the area in which the building on which the tax has been levied is situate.

12. *Powers of revision of the District Collector.*—The District Collector may at any time call for and examine the record of any proceeding pending before, or disposed of by, the appellate authority or the assessing authority and may pass such order in reference thereto as he thinks fit:

Provided that no such order shall be passed under this section without notice to the party who may be affected by the order:

Provided further that no order passed on the basis of a reference under section 11 and to the extent covered by the answer to such reference shall be subject to revision by the District Collector.

13. *Rectification of mistake.*—(1) The appellate authority or the revisional authority may at any time within three years from the date of an order passed by it on appeal or revision, as the case may be, and the assessing authority may at any time within three years from the date of any assessment or refund order passed by it, of its own motion, rectify any mistake apparent from the record of the appeal, revision, assessment or refund, as the case may be, and shall within the like period rectify any such mistake which has been brought to its notice by an assessee:

Provided that no such rectification shall be made which has the effect of enhancing an assessment or reducing a refund unless the assessee has been given a reasonable opportunity of being heard in the matter.

(2) Where any such rectification has the effect of reducing the assessment, the assessing authority shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment or reducing a refund, the assessing authority shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable; and such notice of demand shall be deemed to be issued under section 9 and the provisions of this Act shall apply accordingly.

14. *Power to take evidence on oath, etc.*—The appellate authority, the assessing authority and the revisional authority shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions.

15. *Payment of buildings tax.*—Any amount specified as payable in a notice of demand under section 9, or an order under section 10 or an order under section 12, shall be paid in such number of instalments, within such time, at such place and to such person, as may be prescribed, and any assessee failing so to pay shall be deemed to be in default.

16. *Mode and time of recovery.*—(1) When the buildings tax is not paid on the due date the arrears of the tax shall bear interest at the rate of six per cent per annum from the date of default.

(2) The arrears of buildings tax and the interest, if any, thereon shall be a first charge on the building, and, notwithstanding anything contained in any other law, the claim for such arrears and interest shall have precedence over the claim for any tax levied by a local authority, and such amount shall be recoverable under the law for the time being in force relating to the recovery of arrears of land revenue.

17. *Refunds.*—(1) If any person satisfies the assessing authority that the amount of buildings tax paid by him exceeds the amount with which such person is properly assessable under this Act, he shall be entitled to a refund of any such excess.

(2) The appellate authority in the exercise of its appellate powers or the revisional authority in the exercise of its revisional powers, if satisfied to the like effect, shall cause a refund to be made by the assessing authority of any amount found to have been wrongly paid or paid in excess.

18. *Limitation of claims for refund.*—No claim to any refund of buildings tax under section 17 shall be admitted unless it is made within one year from the date of the order of assessment or, where an appeal ** ** ** ** has been preferred or where there has been a revision, within one year from the order in appeal or revision as the case may be.

19. *False statements in declaration.*—If any person makes a statement in a verification mentioned in section 6 or sub-section (2) of section 10 which is false and which he either knows or believes to be false or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.

20. *Failure to furnish return.*—(1) If any person fails without reasonable cause or excuse to furnish in due time any return specified in sub-section (1) or sub-section (3) of section 6,
** ** ** ** ** **
the assessing authority, the appellate authority or the revisional authority may impose a penalty which may extend to five rupees for every day during which the default continues.

(2) The penalty imposed under sub-section (1) may be recovered in the same manner as arrears of buildings tax.

21. *Power of Inspection.*—(1) The assessing authority or any other officer authorised by the assessing authority, the appellate authority or the revisional authority in this behalf may, after due notice at any ** time between sunrise and sunset, enter any building for the purpose of collecting particulars relating thereto or for taking measurements of the building and may require the owner of the building or any other person in charge or in occupation of the building to produce for inspection any book, register or record kept therein and ask for any information relating to the building; and the owner of the building or other person in charge or occupation shall be bound to afford facilities for taking measurements and for such inspection, and furnish such information as is available with him.

(2) Any person who obstructs the assessing authority or other officer authorised in the exercise of the powers conferred on it or him under sub-section (1) * * * * * *, shall be punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

22. *Prosecutions.*—(1) A person shall not be proceeded against for an offence under section 19 or section 21, except at the instance of such officer as may be authorised by the Government in this behalf.

(2) Before instituting proceedings against any person under sub-section (1) the officer so authorised shall call upon such person to show cause why proceedings should not be instituted against him.

(3) The officer so authorised may either before or after the institution of proceedings compound any such offence other than an offence under section 21.

23. *Manner of service of notice.*—(1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908.

(2) Any such notice or requisition may, in the case of a firm, Hindu undivided family or Aliyasanthana family or branch or Marumakkathayam tarwad or tavazhi or a family to which the provisions of the Kerala Nambudiri Act, 1958, apply, be addressed to any member of the firm or to the Manager, Ejaman or Karnavan, or any adult member of the family, tarwad, tavazhi or branch and, in the case of any other association of persons, be addressed to the principal officer thereof.

24. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act,

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for—

(a) the determination of the floorage of buildings;

(b) the form of returns under section 6 and the manner in which they should be verified;

(c) the form of the notice of demand mentioned in section 9;

(d) the mode and manner of payment and recovery of tax;

(e) the powers and duties of assessing authorities, appellate authorities and other officers under this Act, the relation of such authorities to each other and the conditions of service of such authorities;

(f) the form in which appeals under this Act shall be presented and the manner in which they shall be verified;

(g) the form of application under section 11;

(h) the form of the notice of demand mentioned in sub-section (3) of section 13;

(i) the manner in which and the authority to whom applications for refund shall be made and the procedure to be followed in respect of such applications; and

(j) all other matters expressly required or allowed by this Act to be prescribed.

(3) All rules made under this Act shall, as soon as may be after they are made, be laid before the Legislative Assembly for a period of not less than fourteen days, and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

25. *Bar of suits in civil courts.*—No suit shall be brought in any civil court to set aside or modify any assessment made under this Act and no prosecution, suit or other proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act.

26. *Computation of period of limitation.*—In computing the period of limitation prescribed for any appeal under this Act the date on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded.

27. *Buildings tax not to be taken into account in fixing fair rent.*—For the avoidance of doubt, it is hereby declared that in fixing the fair rent of a building under section 5 of the Kerala Buildings (Lease and Rent Control) Act, 1959 (16 of 1959), the rent control court shall not take into consideration the buildings tax that is payable in respect of the building under the provisions of this Act.

28. *Removal of difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, the Government, as occasion may require, may by order do anything not inconsistent with the provisions of this Act for the purpose of removing the difficulty.

THE SCHEDULE

(*See section 4*)

RATES OF BUILDINGS TAX

Floorage.	*Rate.*
Where the total floorage of a building is less than 1000 square feet	Nil.
Where the total floorage of a building is 1000 square feet or more but does not exceed 2000 square feet	10 nP. per sq. ft.
Where the total floorage of a building exceeds 2000 square feet but does not exceed 4000 square feet	20 nP. per sq. ft.
Where the total floorage of a building exceeds 4000 square feet but does not exceed 8000 square feet	30 nP. per sq. ft.
Where the total floorage of a building exceeds 8000 square feet but does not exceed 12,000 square feet	40 nP. per sq. ft.
Where the total floorage of a building exceeds 12,000 square feet	50 nP. per sq. ft.

Legislature Secretariat,
Trivandrum, 19th May 1961.

D. TIRUMALAI,
Secretary,
Legislative Assembly.